THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.14805 of 2001

ORAL ORDER:

This writ petition is filed seeking Certiorari to call for the records relating to I.A.No.296 of 2001 in C.T.A.No.65 of 2001 on the file of the A.P. Cooperative Tribunal and quash the same as illegal and arbitrary and consequently declare the award passed by the third respondent in A.R.C.No.8/99-OSD dated 26.2.2001 in so far as petitioners are concerned, as illegal and arbitrary.

It appears, one Yogeshwar Reddy, the elder son of the first petitioner obtained loan from the second respondent Bank for establishing his business. According to the petitioners, the said Yogeshwar Reddy obtained their signatures on some blank papers and used them for the purpose of obtaining loan as if petitioners are sureties. It is the case of the petitioners that they have no knowledge about the said loan and they never stood as sureties and that was the subject matter of dispute under Section 61 of the A.P. Cooperative Societies Act, 1964 before the third respondent-Arbitrator. After hearing all the parties, the Arbitrator passed award in A.R.C.No.8/99-OSD dated 26.2.2001 holding that the respondents therein are jointly and severally liable for payment of the amounts due. Aggrieved by the same, petitioners filed C.T.A.No.65 of 2001 before the A.P. Cooperative Tribunal, Hyderabad. Along with the appeal, they also filed I.A.No.296 of 2001 seeking stay of the award dated 26.2.2001. The said I.A. was disposed of by order dated 30.4.2001 directing the petitioners to deposit 50% of the amount due mentioned in the award i.e. Rs.33,51,359/- within a period of one month i.e. on or before 30.5.2001, failing which, the interim stay shall stands vacated. Aggrieved by the same, the present writ petition is filed.

This Court, on 20.7.2001 granted interim stay of execution of the

award dated 26.2.2001 passed by the third respondent against the petitioners. However, it was made clear that the order does not preclude the decree-holder from proceeding against the mortgaged property first.

The learned counsel for petitioners states that the petitioners are only sureties and unless and until, the mortgaged property is sold, the respondents cannot proceed against them. In this regard, the learned counsel relied on the judgment of the Supreme Court in **UNION BANK OF INDIA v. MANKU NARAYANA**[1], wherein it was held that;

> *"The decree in execution is a composite decree, personally against the defendants including the respondent and also against the mortgaged property. We do not pause to consider whether the two portions of the decree are severable or not. We are of the view that since a portion of the decreed amount is covered by the mortgage, the decree-holder Bank has to proceed against the mortgaged property first and then proceed against the guarantor".*

In view of the above, this writ petition is disposed of with the following direction:

There shall be stay of execution of the award dated 26.2.2001 passed by the third respondent in A.R.C.No.8/99-OSD against the petitioners. However, this will not preclude the decree-holder from proceeding against the mortgaged property first. No order as to costs.

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C.V.RAMULU, J

Date: 7.12.2006

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IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.14805 of 2001

Date: 7th December, 2006

Between:

Smt.K.Susheela Devi & another.

.. Petitioners

And

The State of Andhra Pradesh, rep. by
its Secretary, Department of Cooperation,
Secretariat Buildings, Hyderabad & others.

.. Respondents

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[1] AIR 1987 SC 1078